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224-54

June 24, 1954

George F. Nelson, Esq.,  
Assistant Attorney General

Attorney General

Turnpikes -- Option on property

Stanton C. Otis,  
Right of Way Engineer,  
Department of Public Works and Highways

Dear Stan:

Because the exact text of the option to purchase real estate referred to in your June 15, 1954 communication is not available, I can do no more than generalize in regard to your problem.

The option to purchase undoubtedly relates to the price to be paid by the proposed purchaser for the particular premises. The taking during the term of the option presumably reduces the value of the whole premises, rendering them less desirable to the purchaser and less valuable to the seller. If the taking by the state renders the premises sufficiently undesirable to the particular purchaser who now holds the option, he may be able to elect to declare the deal at an end and the present owner's damages would be measured by the difference between what he could have sold the premises for had there been no taking and what he can sell them for after the taking. He cannot now convey what he undertook to convey when he made the sales option agreement.

If the owner and proposed purchaser are in fair, honest agreement as to the value of what now can be conveyed by the seller and agree on a new sales price for that residue and the reduction in price is commensurate with the commission's opinion of the reduction in value occasioned by the taking, payment of the sum so arrived at to the present owner would satisfy all parties because the purchaser would be compensated for his loss by the reduction in price. It would seem that the commission must deal with the owner and proposed purchaser simultaneously, so that all three, they and the State, are in accord on the proper figure.

If it is necessary to condemn these premises, a check in the amount of the commission's award, payable to both the present owner and the holder of the option to purchase, should be tendered to both since both have rights in the land which are measured by the same yardstick of damages (i.e., the purchaser might elect to buy at the option figure and sue for the award, in which case the present owner could be disregarded since he suffered no loss).

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Accordingly, unless the owner and option holder both agree with the commission and both accept the tender, the return and certificate should recite a taking from both the owner and the optionholder and refusal by one is refusal by both.

Very truly yours,

George F. Nelson  
Assistant Attorney General

OFN:HP